

Application No.: 10/783,292

Docket No.: SPINE 3.0-448 CONT

IN THE DRAWINGS

Attachment: Replacement Sheets

REMARKS

The present Amendment is in response to the Office Action mailed December 15, 2004 in the above-identified application. Enclosed herewith is a Petition requesting a one month extension of time for resetting the deadline for responding to the Office Action from March 15, 2005, to and including April 15, 2005.

Applicants note that substantial changes have been made to the drawing figures in order to accurately represent the various embodiments of the invention. Applicants have also made substantial changes to the specification so that the reference numbers in the specification match the changes made to the drawings figures. The changes to the drawings and specification were made in response to the Examiner's objections to the drawings and specification set forth on pages 2 and 3 of the Office Action.

In the Office Action, the Examiner objected to the use of reference characters "138b" and "138d" to designate both radial slots and spiral slots. In response, Applicants have amended FIGS. 5 and 7 as indicated in the attach Letter to the Official Draftsmen.

The Examiner also objected to the drawings because they include reference numbers 136a, 136b, 136c and 137d, which were not mentioned in the specification. In response, reference numbers 136a-136d have been deleted from the drawing figures.

The Examiner objected to the specification as having the informalities listed on page 3 of the Office Action. In response, Applicants have amended the specification as indicated herein. Applicants respectfully assert that the amendment of the specification is in response to the Examiner's objection and overcomes the informalities noted by the Examiner.

The Examiner rejected claims 1-2 and 4 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent

No. 5,893,889 to Harrington. Referring to FIG. 2 thereof, Harrington discloses a disc implant 18 including an upper member 32 having an upper surface 36 with pins 38 and a lower member 34 having a lower surface 40 with pins 42. The upper member 32 includes a threaded tubular portion 50 that receives a threaded annular collar 54 having a neck 57 that is sized to retain a spherical upper end 46 of a threaded post 45. The disc implant 18 also includes an annular shock absorbing member 68 that generally conforms to the opposing frustoconical surfaces of the upper and lower members 32, 34. The device 18 also includes a tubular membrane 78 that is held in place by retaining rings 74, 76 securable in annular grooves 70, 22 of the upper and lower members 32, 34. The tubular membrane 78 is a tubular shield of flexible material that extends around the circumference of the prosthesis to prevent bodily tissues from growing between the members. Column 2, lines 24-26. The tubular membrane 78 does not hold the threaded annular collar 54 against the upper plate member 32. Applicants respectfully assert that claim 1 is unanticipated by Harrington because the cited reference does not disclose "a convex element that is maintained against said first plate member by a retaining wall and a retaining ring." In addition, claim 1 is unanticipated because Harrington does not disclose or suggest a device with "the retaining wall being on the first plate member and engaged with the retaining ring to hold said convex elements against said first plate member." Claims 2 and 4 are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

In the present amendment, Applicants have added new claims 6-10, which are fully supported by the originally filed specification and add no new matter. Support for the limitations found in new claims 6-10 are found in drawing FIGS. 9-12 and the specification at paragraphs 30-38.

New claim 6 is unanticipated by Harrington because the cited reference does not disclose a device whereby "the retaining wall extends from said first plate surface of said first plate member."

New claim 7 is unanticipated by Harrington because the cited reference does not disclose a device whereby "the retaining wall is in contact with said first plate surface of said first plate member."

New claim 8 is unanticipated by Harrington because the cited reference neither discloses nor suggests a device whereby "the retaining wall and the retaining ring define a space over said first plate surface of said first plate member, and wherein said convex element is movable relative to said first plate surface of said first plate member."

New claim 9 is unanticipated by Harrington because the cited reference neither discloses nor suggests a device whereby "the retaining wall and the retaining ring cooperate together for limiting movement of said convex element relative to said first plate member."

New claim 10 is unanticipated by Harrington because the cited reference neither discloses nor suggests a device whereby "said convex element is movable relative to said first plate member."

In the Office Action, the Examiner also rejected claims 3 and 5 under 35 U.S.C. §103(a) as being unpatentable over Harrington in view of U.S. Patent No. 5,989,291 to Ralph et al. In response, Applicants respectfully assert that Ralph does not overcome the deficiencies noted above in Harrington. Thus, claims 3 and 5 are unobvious over the combination of Harrington and Ralph and are otherwise allowable.

The Examiner provisionally rejected claims 1-5 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 and 4-5 of

copending U.S. Patent Application Serial No. 10/781,021. In response, Applicants enclose herewith the terminal disclaimer relative to U.S. Patent Application Serial No. 10/781,021.


As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: April 14, 2005

Respectfully submitted,

By 

Michael J. Doherty

Registration No.: 40,592

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants

557352_1.DOC

3/5

FIG. 3A

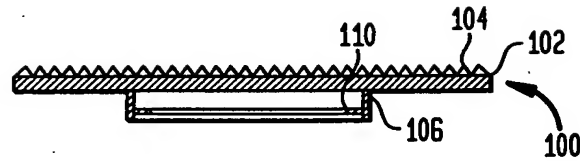


FIG. 3B

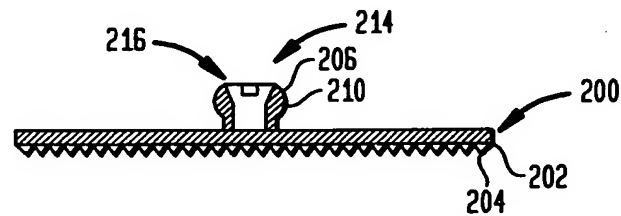


FIG. 4A 4

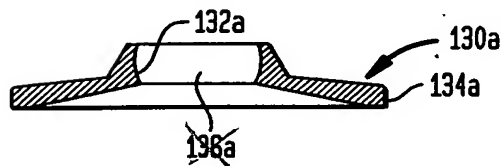


FIG. 4B 5

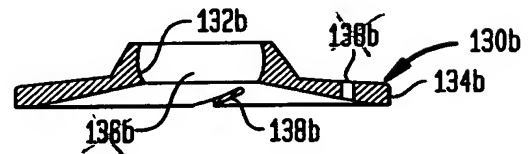


FIG. 4C 6

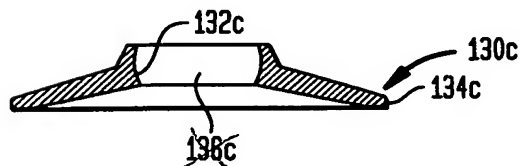
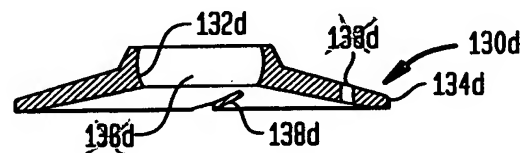


FIG. 4D 7



4/5

FIG. 5A 8A

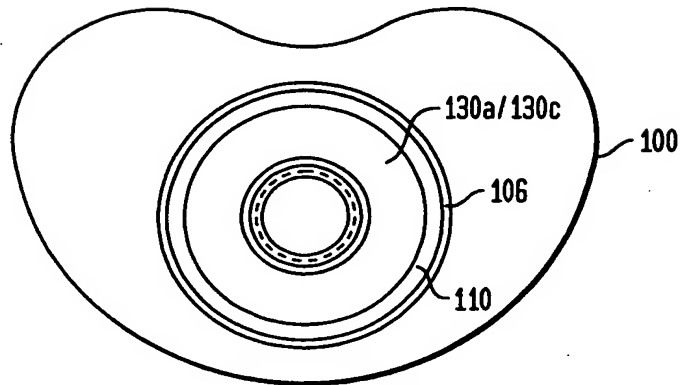


FIG. 5B 8B

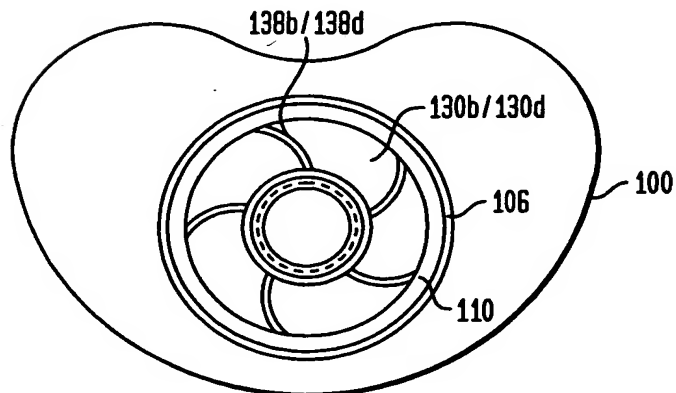
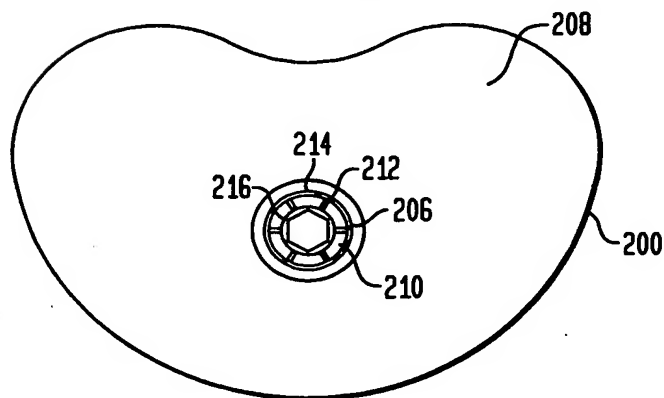


FIG. 5C 8C



5/5

FIG. 6A 9

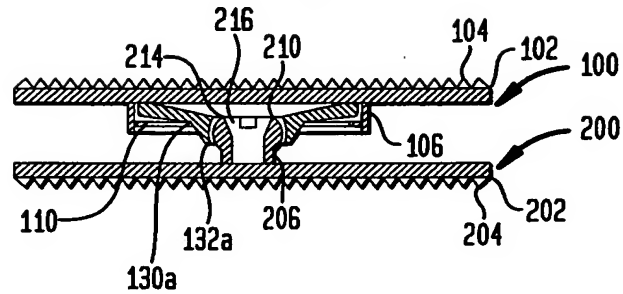


FIG. 6B 10

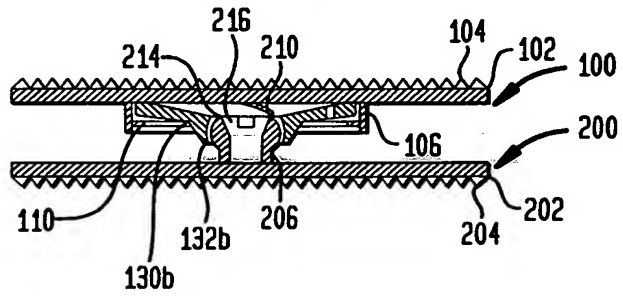


FIG. 6C 11

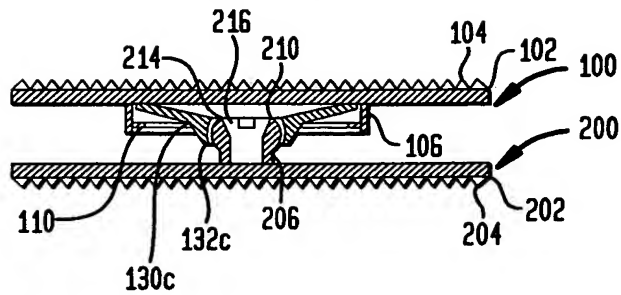


FIG. 6D 12

